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European Languages

زبانهای اروپایی

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09.12.2023

Thresholds of Dialogue with Hamas and Russia

Should potential mediators negotiate with Hamas? At a recent dinner of eminent international lawyers, an animated difference of opinion arose about whether there should be negotiations with Hamas. On the one side, people said Hamas was a terrorist organization that was beyond conversations after its heinous crimes on October 7. On the other side, it was pointed out that “if you’re part of the problem, you must be part of the solution.” No truce, cease-fire or humanitarian pause can happen without negotiations with Hamas. The conversation then turned to how various international organizations have dealt with Russia. Should they be suspended? How can international organizations treat them normally after the February 24 invasion?

Behind the obvious geopolitics of the Russia/Ukraine war or the Israel/Palestinian conflict there are thresholds of dialogue both public and private. Should mediators keep talking to countries or groups who have egregiously violated accepted norms? The golden rule of diplomacy is “We agree to disagree.” But prior to the diplomatic “we agree to disagree” is the presence of more than one party at the table. The “we” is not singular. Negotiations don’t happen in a vacuum.

The Russia/Ukraine war and the Middle East conflict represent quandaries of dialogue. Negotiate with gross violators of accepted norms? The first human reaction is to punish. The international system has no army to punish violations of international law. The toolbox is very small. Sanctions are one form, perhaps the easiest. But sanctions close relationships. If country X sanctions country Y by stopping trade, for example, the interaction between the two countries becomes limited. Sanctions reduce or suspend dialogue.

Following the Russian invasion of Ukraine, various sanctions were placed on the Russian Federation as well as on certain Russian citizens. The first assumption was, and is, that Russia and Russians should be punished. It is also assumed that sanctions would change Russia's behavior. Since the Russian Federation could not be tried and put in prison – the International Criminal Court has issued an arrest warrant for Vladimir Putin – sanctions denied the country and some citizens their usual transaction venues.

Besides sanctions or suspended membership – the U.N. General Assembly suspended Russia from the Human Rights Council – there is also boycotting Russia. At the recent ministerial meeting of the Organization for Security and Co-operation in Europe (OSCE) in Skopje, North Macedonia, five states boycotted the meeting. Ukraine, Lithuania, Latvia, Estonia, and Poland said they would not attend because the foreign minister of Russia, Sergei Lavrov, would be present.

The OSCE, formerly the Conference for Security and Co-operation in Europe, was founded in 1975 explicitly to promote dialogue at the height of the Cold War. (It became the OSCE in 1994.) The OSCE has fostered dialogue and agreements between East and West on a wide range of issues such as arms control, free and fair elections, and freedom of the press.

So the world's largest regional organization (57 members) designed to encourage dialogue at the height of East-West tension is now being boycotted by five pro-Western countries.

Here are some of the stated reasons for not attending by the boycotting countries:

"[T]he presence of the Russian delegation at minister-level for the first time since the beginning of Russia's full-scale invasion of Ukraine will only worsen the crisis into which Russia has driven the OSCE," the Ministry of Foreign Affairs of Ukraine noted.

"Lavrov's place is at a special tribunal, not at the OSCE table," Estonian Minister Margus Tsahkna said about Lavrov's invitation to the Skopje meeting.

"We just cannot ignore the fact that the Russian minister of foreign affairs will be present at the table of the organization that is supposed to build peace and security in Europe," Polish Foreign Minister Szymon Szykowski told reporters.

The foreign ministers of the three Baltic countries issued a statement saying that Lavrov's participation "risks legitimizing aggressor Russia as a rightful member of our community of free nations, trivializing the atrocious crimes Russia has been committing."

The United States did not boycott the meeting, but it made its own boycott known. Secretary of State Antony Blinken was present, but did not meet with Lavrov. Responding

to questions about a possible meeting with Lavrov, a State Department representative said, “We do not expect this.”

Despite all the sanctions, suspensions, and boycotts trying to isolate Russia, Russia’s behavior towards Ukraine has not changed. While organizations and countries may feel morally justified in imposing sanctions, suspensions or boycotts, the effects have not been positive. Russian troops are still fighting inside Ukraine. The invasion continues.

What about Hamas? If sanctions, suspensions and boycotts have not worked against Russia, what about labelling an organization as “terrorist”? Hamas has been designated a terrorist group by Israel, the United States, the European Union, Britain and several other countries.

The terrorist label is highly contested. For more than 20 years an anti-terrorism convention has been under discussion but has been blocked because there is no agreement on the definition of terrorism. There is no criterion to say that a particular group is a terrorist group or not. These are just political decisions. And finally, there is also no criterion for a group to be off the list.

(Up to 2008, Nelson Mandela and the African National Congress were still on the United States’ list of terrorists. The 1993 Nobel Peace Prize was awarded jointly to Nelson Mandela and Frederik Willem de Klerk “for their work for the peaceful termination of the apartheid regime, and for laying the foundations for a new democratic South Africa.”)

Labeling a group “terrorist” poses enormous difficulties in terms of contacts and negotiations. Under the U.S.A. Patriot Act of 2001 (officially the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism): “Whoever knowingly provides material support or resources to a foreign terrorist organization, or attempts or conspires to do so, shall be fined under this title or imprisoned not more than 15 years, or both, and if the death of any person results, shall be imprisoned for a term of years or for life.”

The Supreme Court upheld the Patriot Act in a 2010 decision, *Holder vs the Humanitarian Law Project*. The decision further confirmed the illegality of “material support” to terrorist groups such as “training, “expert advice or assistance,” “service and personnel” under the Patriot Act. The Court ruled that any assistance could “legitimize” the group and free up resources for terrorist activities. The Court’s decision put in danger any person or organization in contact with designated terrorist group even if they were only teaching humanitarian law or how to negotiate a peace settlement. The terrorist label was meant to establish complete isolation.

Jimmy Carter, among others, criticized the law: “The ‘material support law’ – which is aimed at putting an end to terrorism – actually threatens The Carter Center’s work and the work of many other peacemaking organizations that must interact directly with groups that have engaged in violence. The vague language of the law leaves us wondering if we will be prosecuted for our work to promote peace and freedom.”

Another example of the dangers of terrorist labeling: Switzerland is debating labeling Hamas a terrorist organization. What would this mean for the neutral country? Professor Ricardo Bocco of the Geneva Graduate Institute explained to *Swissinfo* how it would limit Switzerland’s role in future negotiations:

“Switzerland’s previous engagement with Hamas, despite its global perception, allowed it to mediate previous conflicts and negotiations effectively due to its neutral stance. The shift towards declaring Hamas a terrorist organization contradicts Switzerland’s historical neutrality and mediating role. It potentially hampers its capacity to navigate and mediate future regional conflicts and negotiations, such as releasing hostages or facilitating dialogues between conflicting parties.”

While it is illegal in many countries to talk to a designated terrorist organization, surely Qatar and other mediators are negotiating with Hamas about hostage/prisoner exchanges as well as extending the pause. Where are representatives of those countries which have labeled Hamas a terrorist organization in the negotiations? the United States? Switzerland? Nowhere, at least publicly.

Sanctions, suspensions and boycotts haven’t worked against Russia. Labelling Hamas a terrorist organization will not help negotiations on prisoner exchanges, humanitarian pauses or an eventual peace plan. “If you’re part of the problem, you’re part of the solution,” gets my vote.

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CounterPunch 08.12.2023